



DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 5b

RIN: 0970-AC92

Privacy Act; Implementation

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), Department of Health and Human Services (HHS or the Department).

ACTION: Notice of proposed rulemaking.

SUMMARY: HHS proposes to exempt certain records in an existing system of records maintained by OCSE within ACF from the accounting, access, and amendment requirements of the Privacy Act. The affected system of records is *OCSE Federal Case Registry of Child Support Orders, HHS/ACF/OCSE*, System No. 09-80-0385. Only case files marked with the Family Violence Indicator (FVI) are proposed to be exempted, to align with a restriction in the Social Security Act which prohibits disclosure of case files marked with the FVI to anyone other than a court or agent of a court, to avoid harm to the custodial parent or the child of such parent. Elsewhere in this issue of the **Federal Register**, HHS/ACF has published an updated system of records notice (SORN) for system 09-80-0385 for public notice and comment.

DATES: Consideration will be given to written comments on this notice of proposed rulemaking (NPRM) received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by [docket number ACF-2022-0003 and/or Regulatory Information Number (RIN) number 0970-AC92], by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the

instructions for submitting comments.

- *Mail:* Written comments may be submitted to: Office of Child Support Enforcement, *Attention:* Division of Policy and Training, 330 C Street SW, Washington, DC 2020, Attention: Tricia John.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: General questions about the proposed exemptions may be submitted to Yvette Riddick, Director, Division of Policy and Training, Office of Child Support Enforcement, Yvette.Riddick@acf.hhs.gov. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

I. Background

The Privacy Act of 1974, as amended, 5 U.S.C. 552a (hereafter abbreviated “Privacy Act” or “Act”), governs how the U.S. Government collects, maintains, uses, and disseminates records about individuals that are maintained in a “system of records.” A system of records is a group of any records under the control of an agency from which information about an individual is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. See 5 U.S.C. 552a(a)(4) and (5).

Under the Privacy Act, individuals have access and amendment rights with respect to records about them in a federal agency system of records, and the right to seek an accounting of certain disclosures made of the records about them, but the Act permits certain types of systems of records (identified in subsections (j) and (k) of the Act) to be exempted from those, and other, requirements of the Act. Subsection (k)(2) permits the

head of an agency to promulgate rules to exempt investigatory material compiled for law enforcement purposes from requirements including those listed in 5 U.S.C. 552a(c)(3) and (d)(1) through (4) --subject to a limitation stated in 5 U.S.C. 552a(k)(2). The limitation is that if, as a result of the agency's maintenance of the material, the subject individual is denied any right, privilege, or benefit that the individual would otherwise be entitled by federal law or for which the individual would otherwise be eligible, the exemptions will apply only to confidential source identifying material (i.e., material that would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence).

The system proposed for exemption, *OCSE Federal Case Registry of Child Support Orders*, HHS/ACF/OCSE, System No. 09-80-0385 (hereafter abbreviated "FCR"), is a Privacy Act system containing investigatory material compiled for law enforcement purposes. The system of records was established August 24, 1998 (see 63 FR 45080) and was last modified in full on April 2, 2015 (see 80 FR 17912) and partially updated on February 14, 2018 (see 83 FR 6591). FCR records are compiled to assist states in administering programs under 42 U.S.C. 651 to 669b (title IV-D of the Social Security Act) to improve states' abilities to locate parents and collect child support. OCSE is required to compare records transmitted to or maintained within the FCR to records maintained within HHS/ACF's National Directory of New Hires and other federal agencies' databases and to disclose information about the individuals within the records to state child support agencies or other authorized persons. The information in the FCR assists state child support agencies or other authorized persons to locate individuals who are involved in child support cases and their employment and asset information. The FCR also conducts FCR-to-FCR comparisons to locate information about individuals who are involved in child support cases in more than one state and provides the information to those states. Additional purposes of the FCR are specified in

sections 453 and 463 of the Social Security Act (42 U.S.C. 653, 663) and include assisting states in administering programs under 42 U.S.C. 601 to 619 (title IV-A of the Social Security Act); assisting states in carrying out their responsibilities under child and family services programs operated under 42 U.S.C. 621 through 629m (title IV-B of the Social Security Act); assisting Foster Care and Adoption Assistance programs operated under 42 U.S.C. 670 through 679c (title IV-E of the Social Security Act); providing individuals' states of residence sought pursuant to the Convention on the Civil Aspects of International Child Abduction to authorized persons in a Central Authority; assisting the Attorney General of the United States in locating any parent or child for the purpose of enforcing state or federal law with respect to the unlawful taking or restraint of a child, or making or enforcing a child custody or visitation determination; and assisting the Secretary of the Treasury in administering the sections of the Internal Revenue Code that grant tax benefits based on support or residence of children. FCR records, without personal identifiers, are also available for research purposes likely to contribute to achieving the purposes of the Temporary Assistance for Needy Families (TANF) or the federal/state child support program.

A disclosure prohibition in section 453(b)(2) of the Social Security Act (42 U.S.C. 653(b)(2)) applies to FCR case files marked with the FVI; it prohibits the disclosure of information from the FCR if a state has notified OCSE that the state has reasonable evidence of domestic violence or child abuse and that disclosure of such information could be harmful to the custodial parent or child. *See also* 45 CFR 303.21(e) (describing safeguarding requirements for files marked with the FVI). The proposed exemptions from the Privacy Act's accounting, access, and amendment requirements will apply only to FCR case files marked with the FVI. The exemptions will apply to the entire contents of such files. The FVI indicates there is reasonable evidence of domestic violence or child abuse.

II. Exemption Rationales

The proposed exemptions are necessary to align with the disclosure restriction in section 453(b)(2) of the Social Security Act prohibiting disclosure of case files marked with the FVI to anyone other than a court or agent of a court, to avoid harm to custodial parents and children of such parents. The specific rationales that support the exemptions, as to each affected Privacy Act provision, are as follows:

- *Subsection (c)(3)*. Exempting files marked FVI from the requirement to provide an accounting of disclosures to record subjects is necessary to avoid revealing to a subject individual the identity of persons receiving disclosures from the file, to protect them from unwanted contacts by subject individuals. A subject individual might seek to contact and harass disclosure recipients identified in an accounting in an attempt to get them to reveal protected information in the file about the custodial parent and child of the custodial parent (such as their address information) and about sources who provided family violence-related information in the file and the nature of the information they provided, which if revealed to the subject individual would enable the subject individual or others acting in concert with the subject individual to harm, threaten, harass, or retaliate against the custodial parent, child, and sources; intimidate them from testifying or from applying for child support enforcement services; or improperly influence their testimony and interfere with court proceedings. In instances in which sources were expressly promised confidentiality by the Government in exchange for information they provided, revealing their identities would also violate those express promises of confidentiality.
- *Subsection (d)(1)*. Exempting files marked FVI from access by record subjects is necessary to prevent a subject individual from learning, directly from the file, protected information in the file about the custodial parent and child of the

custodial parent (such as their address information) and about sources who provided family violence-related information in the file and the nature of the information they provided, resulting in the same harms described above.

- *Subsection (d)(2) through (4).* Exempting files marked FVI from the Privacy Act's amendment provisions is necessary because any discussion of the contents of a record sought to be amended in such a file, as required to process the amendment request, would reveal protected information in the file in violation of 42 U.S.C. 653(b)(2).

Accordingly, pursuant to 5 U.S.C. 552a(k)(2), the Department proposes to exempt files marked FVI in system of records 09–80–0385 *OCSE Federal Case Registry of Child Support Orders, HHS/ACF/OCSE*, from the access, amendment, and accounting of disclosures provisions of the Privacy Act (5 U.S.C. 552a(c)(3) and (d)(1) through (4)), to the extent of, and based on, the specific rationales stated above. Notwithstanding the exemptions, ACF/OCSE will consider any requests for access, amendment, or accountings of disclosures that are addressed to the System Manager as provided in the SORN for system of records 09-80-0385.

This proposed rule would amend 45 CFR 5b.11(b)(3)(ii) of the Department's Privacy Act regulations to read "Pursuant to subsection (k)(2) of the Privacy Act" instead of "[Reserved]" and to list this system of records at a newly added (b)(3)(ii)(A), followed by a newly added (b)(3)(ii)(B) stating "[Reserved]." We request public comment on these proposed exemptions.

III. Paperwork Reduction Act

No new information collection requirements are imposed by this regulation.

IV. Analysis of Impacts

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule meets the standards of Executive Order 13563 because it creates a short-term public benefit, at minimal cost to the Federal Government, by not imposing penalties against a state's TANF grant, during a time when public assistance funds are critically needed.

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this NPRM is significant and was accordingly reviewed by OMB.

The Secretary certifies that, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on state governments. State governments are not considered small entities under the Regulatory Flexibility Act.

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an annual expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation). That threshold level is currently approximately \$164 million. This rule does not impose any mandates on state, local, or tribal governments, or the private sector, that will result in an annual expenditure of \$164 million or more.

V. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This regulation does not impose requirements on states or families. This regulation will not have an adverse impact on family well-being as defined in the legislation.

VI. Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism impact as defined in the Executive Order 13132.

January Contreras, Assistant Secretary of the Administration for Children & Families, approved this document on June 6, 2022.

List of Subjects in 45 CFR Part 5b

Privacy.

Xavier Becerra,
Secretary,
Department of Health and Human Services.

For the reasons stated in the preamble, the Department of Health and Human Services proposes to amend 45 CFR part 5b as set forth below:

PART 5b--PRIVACY ACT REGULATIONS

1. The authority citation for part 5b continues to read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

2. Amend § 5b.11 by adding paragraph (b)(3)(ii) to read as follows:

§ 5b.11 Exempt systems.

* * * * *

(b) * * *

(3) * * *

(ii) Pursuant to subsection (k)(2) of the Privacy Act:

(A) OCSE Federal Case Registry of Child Support Orders (FCR),

HHS/ACF/OCSE, 09-80-0385; only records marked with the Family Violence Indicator are exempt, based on the requirements of 42 U.S.C. 653(b)(2).

(B) [Reserved]

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